

Senate Bill No. 1159

CHAPTER 608

An act to amend Sections 4145 and 4147 of, and to repeal Section 4146 of, the Business and Professions Code, to amend Section 11364 of, and to add Chapter 13.5 (commencing with Section 121285) to Part 4 of Division 105 of, the Health and Safety Code, relating to hypodermic needles and syringes.

[Approved by Governor September 20, 2004. Filed
with Secretary of State September 20, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, Vasconcellos. Hypodermic needles and syringes.

(1) Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes. Under existing law, a prescription is required to purchase a hypodermic needle or syringe for human use, except to administer adrenaline or insulin.

This bill, subject to authorization by a county or city, would authorize a licensed pharmacist, until December 31, 2010, to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, which would be created by the bill to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.

The bill would require a pharmacy that participates in the Disease and Demonstration Project pursuant to county or city authorization to comply with specified requirements, including registering with the local health department. The bill would require the State Department of Health Services, in conjunction with an advisory panel, to evaluate the effects of allowing the sale of hypodermic needles or syringes without prescription, and would require a report to be submitted to the Governor and the Legislature by January 15, 2010. The bill would encourage the State Department of Health Services to seek funding from private and federal sources to pay for the evaluation. The bill would impose various other duties on local health departments, thereby imposing a state-mandated local program. The demonstration program would terminate on December 31, 2010.

Alternatively, the bill would also authorize the sale or furnishing of hypodermic needles or syringes to a person for human use without a

prescription if the person is known to the furnisher and has previously provided the furnisher with a prescription or other proof of a legitimate medical need.

The bill would make it unlawful to discard or dispose of a hypodermic needle or syringe upon the grounds of a playground, beach, park, or any public or private elementary, vocational, junior high, or high school. The bill would make a knowing violation of this prohibition a crime, thereby imposing a state-mandated local program.

(2) Existing law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes.

This bill would delete that requirement.

(3) Existing law prohibits the possession and sale of drug paraphernalia.

This bill, until December 31, 2010, subject to authorization by a county or city, would allow a person to possess 10 or fewer hypodermic needles or syringes if acquired through an authorized source.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) This bill would make the operation of its provisions contingent upon the enactment of SB 1362.

The people of the State of California do enact as follows:

SECTION 1. Section 4145 of the Business and Professions Code is amended to read:

4145. (a) Notwithstanding any other provision of law, a pharmacist or physician may, without a prescription or a permit, furnish hypodermic needles and syringes for human use, and a person may, without a prescription or license, obtain hypodermic needles and syringes from a pharmacist or physician for human use, if one of the following requirements is met:

(1) The person is known to the furnisher and the furnisher has previously been provided a prescription or other proof of a legitimate



medical need requiring a hypodermic needle or syringe to administer a medicine or treatment.

(2) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within the city, for the period commencing January 1, 2005, and ending December 31, 2010, a pharmacist may furnish or sell 10 or fewer hypodermic needles or syringes at any one time to a person 18 years of age or older if the pharmacist works for a pharmacy that is registered for the Disease Prevention Demonstration Project pursuant to Chapter 13.5 (commencing with Section 121285) of Part 4 of Division 105 of the Health and Safety Code and the pharmacy complies with the provisions of that chapter.

(b) Notwithstanding any other provision of law, a pharmacist, veterinarian, or person licensed pursuant to Section 4141 may, without a prescription or license, furnish hypodermic needles and syringes for use on animals, and a person may, without a prescription or license, obtain hypodermic needles and syringes from a pharmacist, veterinarian, or person licensed pursuant to Section 4141 for use on animals, providing that no needle or syringe shall be furnished to a person who is unknown to the furnisher and unable to properly establish his or her identity.

SEC. 2. Section 4146 of the Business and Professions Code is repealed.

SEC. 3. Section 4147 of the Business and Professions Code is amended to read:

4147. (a) For the purposes of this section, “playground” means any park or outdoor recreational area specifically designed to be used by children that has play equipment installed or any similar facility located on public or private school grounds or county parks.

(b) Any hypodermic needle or syringe that is to be disposed of, shall be contained, treated, and disposed of, pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.

(c) It is unlawful to discard or dispose of a hypodermic needle or syringe upon the grounds of a playground, beach, park, or any public or private elementary, vocational, junior high, or high school.

(d) A person who knowingly violates subdivision (c) is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for up to six months, or by both that fine and imprisonment.

(e) Subdivision (c) does not apply to the containment, treatment, and disposal of medical sharps waste from medical care or first aid services rendered on school grounds, nor to the containment, treatment, and



disposal of hypodermic needles or syringes used for instructional or educational purposes on school grounds.

SEC. 4. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within in the city, for the period commencing January 1, 2005, and ending December 31, 2010, subdivision (a) shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes if acquired from an authorized source.

SEC. 5. Chapter 13.5 (commencing with Section 121285) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 13.5. DISEASE PREVENTION DEMONSTRATION PROJECT

121285. (a) The Disease Prevention Demonstration Project, a collaboration between pharmacies and local and state health officials, is hereby authorized for the purpose of evaluating the long-term desirability of allowing licensed pharmacists to furnish or sell nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.

(b) The State Department of Health Services shall evaluate the effects of allowing pharmacists to furnish or sell a limited number of hypodermic needles or syringes without prescription, and provide a report to the Governor and the Legislature on or before January 15, 2010. The State Department of Health Services is encouraged to seek funding from private and federal sources to pay for the evaluation. The report shall include, but need not be limited to, the effect of nonprescription hypodermic needle or syringe sale on all of the following:

(1) Hypodermic needle or syringe sharing practice among those who inject illegal drugs.



(2) Rates of disease infection caused by hypodermic needle or syringe sharing.

(3) Needlestick injuries to law enforcement officers and waste management employees.

(4) Drug crime or other crime in the vicinity of pharmacies.

(5) Safe or unsafe discard of used hypodermic needles or syringes.

(6) Rates of injection of illegal drugs.

(c) The State Department of Health Services shall convene an uncompensated evaluation advisory panel comprised of all of the following: two or more specialists in the control of infectious diseases; one or more representatives of the California State Board of Pharmacy; one or more representatives of independent pharmacies; one or more representatives of chain pharmacy owners; one or more representatives of law enforcement executives, such as police chiefs and sheriffs; one or more representatives of rank and file law enforcement officers; a specialist in hazardous waste management from the State Department of Health Services; one or more representatives of the waste management industry; and one or more representatives of local health officers.

(d) In order to furnish or sell nonprescription hypodermic needles or syringes as part of the Disease Prevention Demonstration Project in a county or city that has provided authorization pursuant to Section 4145 of the Business and Professions Code, a pharmacy shall do all of the following:

(1) Register with the local health department by providing a contact name and related information, and certify that it will provide, at the time of furnishing or sale of hypodermic needles or syringes, written information or verbal counseling on all of the following:

(A) How to access drug treatment.

(B) How to access testing and treatment for HIV and hepatitis C.

(C) How to safely dispose of sharps waste.

(2) Store hypodermic needles and syringes so that they are available only to authorized personnel, and not openly available to customers.

(3) In order to provide for the safe disposal of hypodermic needles and syringes, a registered pharmacy shall provide one or more of the following options:

(A) An onsite safe hypodermic needle and syringe collection and disposal program.

(B) Furnish or make available for purchase mail-back sharps disposal containers authorized by the United States Postal Service that meet applicable state and federal requirements, and provide tracking forms to verify destruction at a certified disposal facility.



(C) Furnish or make available for purchase personal sharps disposal containers that meet state and federal standards for disposal of medical waste.

(e) Local health departments shall be responsible for all of the following:

(1) Maintaining a list of all pharmacies within the local health department's jurisdiction that have registered under the Disease Prevention Demonstration Project.

(2) Making available to pharmacies written information that may be provided or reproduced to be provided in writing or orally by the pharmacy at the time of furnishing or the sale of nonprescription hypodermic needles or syringes, including all of the following:

(A) How to access drug treatment.

(B) How to access testing and treatment for HIV and hepatitis C.

(C) How to safely dispose of sharps waste.

(f) As used in this chapter, "sharps waste" means hypodermic needles, syringes, and lancets.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. This act shall become operative only if Senate Bill 1362 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2005.

